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12  
13 **UNITED STATES DISTRICT COURT**  
14 **NORTHERN DISTRICT OF CALIFORNIA**  
15

16 MONTE RUSSELL, on behalf of  
17 himself and others similarly situated,

18 Plaintiff,

19 v.

20 WELLS FARGO & COMPANY,

21 Defendant.  
22  
23

CASE NO. C 07-03993 CW

**STIPULATION AS TO FORM AND  
DISSEMINATION OF  
COLLECTIVE ACTION NOTICE  
AND CONTINUATION OF CASE  
MANAGEMENT CONFERENCE,  
AND ORDER**

24 THIS STIPULATION AND AGREEMENT is made and entered into by and  
25 between Plaintiff Monte Russell ("Plaintiff") and Defendant Wells Fargo Bank, N.A.  
26 (erroneously sued herein as "Wells Fargo & Company") ("Defendant") and applies to the  
27 lawsuit captioned *Russell v. Wells Fargo & Company*, No. C-07-3993 CW (N.D. Cal.).  
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1           1.       Plaintiff filed this action on August 2, 2007, asserting claims pursuant to 29  
2 U.S.C. § 216(b) of the Fair Labor Standards Act (“FLSA”).

3           2.       The parties have an agreement to mediate this action and have agreed to a  
4 course of action to prepare for mediation.

5           3.       The parties have discussed, agreed to, and commenced an informal  
6 exchange of documents and information prior to mediation. The parties agree that this  
7 informal exchange of information is more productive and efficient for purposes of  
8 mediation than formal discovery.  
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10          4.       In addition, the parties have agreed to toll the statute of limitations for  
11 claims raised in the Complaint for the putative collective action members until the  
12 completion of the opt-in notice period to ensure that no putative collective action  
13 members will be prejudiced by this agreement of the parties to mediate. Furthermore, the  
14 parties have also agreed to toll the statute of limitations for claims raised in the Complaint  
15 on behalf of individuals falling within the following definition until 30 days after the  
16 mediation process is completed:

17           All present or former Technology Information Group employees of Wells  
18 Fargo Bank, N.A., who held the position of PC/LAN Engineer 3, PC/LAN  
19 Engineer 4, or PC/LAN Engineer 5, who were paid a salary and were  
20 treated as exempt from the laws requiring payment of overtime at any time  
21 from November 1, 2004, to the present, who have received a payment of  
22 back pay from Wells Fargo Bank, N.A.

23          5.       On November 1, 2007, the parties filed a Stipulation for Continuation of  
24 Case Management Conference (ECF No. 19), wherein the parties agreed that within 30  
25 days of the parties’ mediation they would either: (a) inform the Court that the matter had  
26 been resolved and propose a timeline for approval of the settlement and dismissal of the  
27 action; or (b) inform the Court that the case had not resolved and propose an appropriate  
28 scheduling order.

        6.       Pursuant to the parties’ Stipulation, Your Honor issued an Order on

1 November 5, 2007 (ECF No. 20), continuing the Case Management Conference in this  
2 action, which was previously scheduled to be held at 2:00 p.m., on November 6, 2007 in  
3 Courtroom 2, Oakland, California, to April 8, 2008 at 2:00 p.m. in the above-entitled  
4 Court.

5 7. Subsequent to Your Honor's November 5, 2007 Order, the parties conferred  
6 regarding an appropriate date for mediation of this action such that the parties have  
7 sufficient time to prepare for mediation and have agreed that the mediation will take place  
8 June 18, 2008 with mediator Gig Kyriacou.

9 8. The parties agree that notice of this putative collective action should issue to  
10 individuals who meet the following definition:

11 Current and former Technology Information Group employees of Wells  
12 Fargo & Company and Wells Fargo Bank, N.A., who held the position of  
13 PC/LAN Engineer 3 or PC/LAN Engineer 4, who were paid a salary and  
14 treated as exempt from the laws requiring overtime for some period of time  
15 after November 1, 2004, and who have not received any payment of back  
pay from Wells Fargo Bank, N.A.

16 9. The parties agree as to the content and form of the Notice of Collective  
17 Action Claims under the Fair Labor Standards Act, attached hereto as Exhibit A.

18 10. The parties agree that Rust Consulting, Inc. ("Rust") shall be responsible for  
19 the dissemination of the agreed-upon Notice, subject to the Court's approval.

20 11. The parties agree that within five (5) days after entry of the Court's order  
21 approving the content, form and dissemination of notice, Defendant shall search its  
22 records and provide directly to Rust a complete list containing the names and current or  
23 last known addresses of all persons believed to be putative collective action members (the  
24 "Class List").

25 12. The parties further agree that Notice should be mailed to all current and  
26 former employees meeting the definition referenced above in Paragraph 8 by first class  
27 mail within five (5) days after receipt by Rust of certification from Defendant that  
28

1 Defendant has provided Rust with an entire and complete Class List, unless otherwise  
2 ordered by the Court. Notice shall be mailed to putative collective action members using  
3 the most current mailing address information from Defendant's records as of the time of  
4 mailing.

5 13. The parties agree that Rust shall use reasonable means to locate addresses  
6 for putative collective action members in the event any of the mailed notices are returned  
7 to sender. The parties further agree that Defendant shall cooperate with Rust in all aspects  
8 of locating putative collective action members, including providing social security  
9 numbers for those putative collective action members whose mailed notices are returned  
10 to sender.

11 14. The parties agree that putative collective action members shall have a period  
12 of 45 days from the date on which Notice is disseminated, within which they may opt-in  
13 to the collective action.

14 15. The parties agree that Rust shall immediately provide copies of any opt-in  
15 consent forms to counsel for both parties.

16 16. In light of the foregoing, the parties further agree that it would be most  
17 effective to continue the scheduled Case Management Conference in this matter to a date  
18 subsequent to July 15, 2008.

19 17. Based on the foregoing, Plaintiff, by and through his attorneys of record,  
20 and Defendant Wells Fargo Bank, N.A., by and through its attorneys, hereby stipulate to:

21 A. Dissemination of the Notice of Collective Action Claims under the  
22 Fair Labor Standards Act, attached hereto as Exhibit A or as  
23 otherwise approved by the Court, to individuals falling within the  
24 definition set forth in Paragraph 8 above and in the manner agreed to  
25 by the parties elsewhere herein; and

26 B. Continue the Case Management Conference.  
27  
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1  
2 DATED: March 27, 2008 AUDET & PARTNERS, LLP

3 By: \_\_\_\_\_

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13 *Attorneys for Plaintiff*

14  
15 DATED: March 26, 2008

16 HODEL BRIGGS WINTER LLP

17 By: \_\_\_\_\_

18 GLENN L. BRIGGS

19 Glenn L. Briggs  
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25 Facsimile: (949) 450-8033

26 *Attorneys for Defendant*

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28 lk: 1226029

**ORDER**

PURSUANT TO THE STIPULATION, IT IS SO ORDERED:

1. The Notice attached as Exhibit A shall be mailed to all current and former employees of Defendant meeting the following definition:

Current and former Technology Group employees of Wells Fargo & Company and Wells Fargo Bank, N.A., who held the position of PC/LAN Engineer 3 or PC/LAN Engineer 4, who were paid a salary and treated as exempt from the laws requiring overtime for some period of time after November 1, 2004, and who have not received any payment of back pay from Wells Fargo Bank, N.A.

2. Rust Consulting, Inc. ("Rust") shall be responsible for the dissemination of notice to putative collective action members.
3. Within five (5) days after entry of this Order, Defendant shall search its records and provide directly to Rust a complete list containing the names and current or last known addresses of all persons believed to be putative collective action members (the "Class List").
4. The Notice shall be mailed by Rust to all current and former employees meeting the definition in Paragraph 1 by first class mail within five (5) days after receipt by Rust of certification from Defendant that Defendant has provided Rust with an entire and complete Class List. Notice shall be mailed to putative collective action members using the most current mailing address information from Defendant's records as of the time of mailing.
5. Rust will use reasonable means to locate addresses for putative collective action members in the event any of the mailed notices are returned to sender. Defendant shall cooperate with Rust in all aspects of locating putative collective action members, including providing social security

1 numbers for those putative collective action members whose mailed notices  
2 are returned to sender.

3 6. All putative collection action members must opt in by mailing their consent  
4 forms to Rust no later than forty-five (45) days from the date that Notice is  
5 first mailed, or thirty (30) days from the date that Notice is re-mailed a  
6 second time due to a prior bad address, to putative collective action  
7 members.

8  
9 7. The Case Management Conference, which was previously scheduled to be  
10 held at 2:00 p.m., on April 8, 2008 in Courtroom 2, Oakland, California has  
11 been continued and will be held at 2:00 p.m. on July 22, 2008 in the above  
12 entitled Court.

13 Date: April 7, 2008

A handwritten signature in blue ink, appearing to read "Claudia Wilken", is written over a horizontal line.

14 The Honorable Claudia Wilken  
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